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A CORRECTION.

A few numbers of last week's issue were gathered out of order and the pages, therefore, do not follow consecutively. On notice from any subscriber receiving a defective copy we shall be glad to send a perfect copy.

THE COLLECTIBILITY OF A FRANCHISE TAX IN A FOREIGN JURISDICTION.

The case of Franklin Trust Co. et al v. New Jersey, 181 Fed. 769, decided by First Circuit Court of Appeals, shows that a corporation organized under the laws of New Jersey had its business situs and all its property in another state. There it became insolvent and is being wound up and its property distributed by a court of equity. The State of New Jersey claimed an annual franchise tax for three years, and that this tax should be given priority of payment over local creditors. By a majority opinion the claim was denied all enforcement whatever.

This opinion is rather based upon New Jersey decision as to the nature of such a charge than upon the question of its extra-territorial enforceability as a tax, and the dissent by Judge Putnam is upon the theory that, as the receiver by direction of the court continued to exercise the franchise of the corporation by carrying out its contracts and continuing its business for the benefit of its creditors, there was at least basis for an equitable allowance. The majority opinion says: "The corporation before us in a practical and substantial sense is an insolvent corporation, and the proceeding since the interlocutory decree of December 4, 1905, is one to wind up the corporate affairs in Massachusetts. The corporation is a mere shell, and its existence only a technical one, and it is difficult to see equitable considerations which require that a New Jersey franchise tax or fee, characterized by its own courts as an arbitrary imposition, rather than a just tax upon property, should be extra-territorially upheld and preferred upon equitable principles against *bona fide* creditors in Massachusetts, who have put their money and labor and materials into the local business of the corporation. At best, under the characterization of the New Jersey courts, it is an arbitrary imposition, not a tax at all, and does not have the elements of a tax, but is something in the nature of a license fee imposed upon the corporation without regard to the value of its property or its franchises. The corporation being one which was not to do business within the state creating it, but one which was intended to go and does go elsewhere, the so-called tax is contrary to all principles of just and proportional taxation, and is, therefore, odious in an equitable, if not in a legal sense." The opinion also says: "It must be borne in mind that this is a proceeding under the general rules of equity and not a bankruptcy case. New Jersey v. Anderson, 203 U. S. 483, was decided upon the broad and imperative bankruptcy section in respect to preference of taxes of all kinds, and not upon equitable considerations at all. * * * The strong dissenting opinion of Mr. Justice Harlan, the chief justice, and Mr. Justice Peckham, does, however, deal with the question of equitable priority even in a bankruptcy case." Judge Putnam says in answer to what is said of New Jersey decision characterizing the tax "as an arbitrary imposition," that, yet in that very case, it was ordered to be paid by an insolvent corporation as a tax lawfully assessed during the time the corporation was in the hands of a receiver.

This answer seems quite a conclusive one and, therefore, the question, of whether or not the imposition was or was not enforceable extra-territorially as a tax, was directly involved.

It rather seems regrettable that a case of this kind should not be in a state, rather than in a federal, court. It involved so peculiarly questions intimately relating to state policy, that its highest court is to be deemed the only competent authority to speak on such questions. Discussions by any other tribunal, necessary to dispose of such a litigation, ought to seem reluctant, and, where the occasion is brought about by a figment in respect to partiality against non-residents and aliens, the reason therefor seems so inadequate. We must confess, however, not to have discovered anywhere in federal decision, any modesty on the part of federal judges in giving their views about proper state policy, if they find any hook upon which to hang their remarks.

A state court, however, might, as possessing the right of the conclusive word upon such a question as Judge Putnam thought was involved, have spoken in a much more vigorous way. It might have thought that, if the state of New Jersey affixed the payment of a license fee or tax or whatever it might be called to the continuing validity of a charter, a permit for one of its corporation to do business abroad recognized the validity of what might be termed a condition subsequent to its continuing to be a corporation.

Or the state court might have taken the view, that, if the state of New Jersey provided for such a tax upon corporations, it ought to be construed as referring to those only which were to have their business situs and main property at the home of their charters. And, if statutory language excluded such interpretation, that the requirement was mere *brutum fulmen*, in an attempt, through mere form of law, to invade the internal affairs of a sister state.

Against a conclusion of the kind last mentioned not even "the imperative force of the section of the bankruptcy act" ought to prevail, for such conclusion would cut from under the imposition all claim to any validity elsewhere than in New Jersey. It would not be a tax at all elsewhere.

The case does suggest that states do owe to its residents and to their dignity, that foreign tribute should not be exacted by New Jersey or any other state making such a claim as New Jersey made in the case we are discussing. The federal court argued, in effect, that here was a corporation of New Jersey in name, but of Massachusetts in fact, and New Jersey was claiming to tax it. There is certainly potential injustice in such a tax to the citizens of Massachusetts, and what seems tribute to a foreign power from its doing business there. There are thus both inequality of right of residents against corporations, in all practical effect, and a derogation to its dignity in all that may be claimed by another state by virtue of its laws. New Jersey could claim no invidiousness against it, if another state thus concluded, and, it may be thought it is not altogether in accord with its own dignity that it should wish to collect any license fees for a corporation, in practical effect, of another state, continuing there to "live and move and have its being." If another State extends comity to one of its charters that would seem all it ought in self-respect to be willing to accept from an equal sovereignty.

NOTES OF IMPORTANT DECISIONS

INSURANCE CLAUSE IN PLATE GLASS POLICY EXCEPTING LOSS BY FIRE, CAUSED DIRECTLY OR INDIRECTLY.—In the case of Jones v. Metropolitan Casualty Ins. Co., 128 N. W. 280, decided by Wisconsin Supreme Court, a plate glass policy excepted "loss or damage resulting directly or indirectly from fire, whether on the premises above described or not."

The loss sued for was from a plate glass being broken by concussion from an explosion of dynamite, 700 feet away, in a warehouse which was set on fire by an incendiary.

The Supreme Court in an opinion affirming judgment of the trial court for defendant, thus speaks:

"All causes have behind them in the chain of causation other causes. Every event is the outcome or result of causes operating directly or indirectly in sequence or simultaneously to produce that event. In order to justly fix

liability, the law endeavors to select in a practical way the legally responsible cause which, without much regard to the literal meaning of the adjective word, we call the "proximate" cause. In some cases, the proximate cause is very obvious; in others, it requires great discrimination to discover and identify it. A negation of liability for damages caused directly or indirectly by a stated element, presents for investigation quite a different question. If parties to a contract so provide, they have employed one of the most comprehensive expressions which the language affords to exclude the right to recover all damages caused by that element whether proximately or not. There is in this case no question of a simultaneously concurring independent cause, and what is decided does not include that. In this case, in order to be within the obligation and without the exception of the policy, it must appear that the fire was not the proximate cause, nor a principal cause, nor a link in the chain of causation, nor even an indirect cause, in short, not a cause at all, of the breakage. Here the pleader shows that the breakage was caused, directly or indirectly, it matters not which, by the fire."

This opinion rather departs from formula in saying nothing about the rule of construction being against insurance companies where the words of contract offer any opportunity for such an observation. And we think that here such a rule might well have saved the insured's contract.

It may be readily conceived that the parties had in mind, that there was exemption from loss where some natural agency, such as wind blowing from the direction of a neighboring building on fire, or from material falling from a burning building near at hand, but the court's reasoning implies there is no limit to the exemption, except that fire shall be in some way a contributing cause.

Let us suppose a dray was passing a burning building and the team becoming frightened at the fire, ran away and into an insured's window. Would that be within the exception? As the court reasons, it would. But, if it would not, would the secondary cause of the explosion, the third cause from the fire and the fourth from incendiarism be, where the building was as remote as this? Are the parties to be supposed as having in mind such an unlikely thing as stores in a building of explosive character and over and every stretch of space from which possible harm might result? It seems to us there was something of a question of fact ignored by the court.

IMPOLICY OF MODERN DECISION AND STATUTE MAKING CORPORATIONS INDICTABLE AND THE CONFUSION IN MORALS THUS CREATED.

Progress in Decision as to Indictability of Corporations.—In a very early case in Maryland, the opinion being rendered in in 1828,[1] Bland, chancellor, classifies corporations as being those created for the public police, private corporations and those partaking of the nature of the former two. Of the second class he says: "It is remarkable that there is no instance of the creation of any body politic of this description under the provincial government; but since the establishment of the republic they have increased and multiplied to a very long and growing family." As to their liability, criminal and civil, he says: "It is now settled that a corporation may be charged in actions *ex delicto* as well as *ex contractu*, notwithstanding the general doctrine, that they can only act and bind themselves by means of their corporate seal. For although the members of the body politic, in their corporate capacity, cannot commit a crime or perpetrate a felony, yet since the institution is governed by the intellectual agency of natural persons, they may cause it so far to depart from the purpose of its establishment, as by means of its servants to commit a trespass or tort, or unlawfully to refuse to make compensation for that by which it had been, upon its own request, materialy benefitted; and, therefore, redress is allowed to be had against it by an action of trespass, trover or assumpsit, as may be best suited to the nature of the case."

One dominant note in this decision is that as colonists we had no private corporations and historically we believe it to be true that in England the purely private corporation scarcely existed. Another note, based on the rule in regard to corporations of the other two classes is that they were incapable of crime, but if they wronged one by an act, that might be a crime, the person wronged had a remedy on the theory that,

presumptively, the corporation had benefitted by the act of its agents. No criminal jurisprudence, however, has ever been known to proceed on any such theory. It matters not, in remotest conception, that a criminal wrongdoer shall have profited by his crime, for an attempt to commit a crime may be as fully within its purview as to commit it. No remedy, however, is ever given, civilly, in tort, except for a wrong actually committed. That a corporation is held for a tort is taken out of the operation of the *ultra vires* principle on the theory of a resulting benefit. That this may not always work out, in fact, is an exception the rule of presumption merely ignores.

In 1841 we find the supreme judicial court of Maine, expressing itself as follows:[2] "A corporation is created by law for certain beneficial purposes. It can neither commit a crime nor a misdemeanor by any positive or affirmative act, nor incite others to do so, as a corporation. While assembled at a corporate meeting a majority may, by a vote entered upon their records, require an agent to commit a battery; but, if he does so, it cannot be regarded as a corporate act, for which the corporation can be indicted. It would be stepping aside altogether from their corporate powers. If indictable as a corporation for an offense thus incited by them, the innocent dissenting minority become equally amenable to punishment with the guilty majority. Such only as take part in the measure should be prosecuted as individuals, either as principals or as aiding and abetting or procuring an offense to be committed, according to its character or magnitude. It is a doctrine, then, in conformity with the demands of justice and a proper distinction between the innocent and guilty, that, when a crime is committed under color of corporate authority, the individuals acting in the business, and not the corporation should be indicted. Ang. & Ames on Corp. 396, sec. 9."

This case concerned misfeasance in the creating of a nuisance and was afterwards by the same court[3] declared to be obsolete as to such cases "upon grounds so satisfactory and heretofore well-stated by other courts that it is needless to restate them. See Commonwealth v. Proprietors, etc., 2 Gray, 345, 346; People v. Corp. of Albany, 11 Wend. 539, 27 Am. Dec. 99; Mayor v Furze, 3 Hill 615."

The case in 2 Gray, decided in 1854, being thus referred to, it is appropriate to quote from the opinion of Justice Bigelow. "The corporation is indicted for obstructing a navigable stream, and it being conceded that this constitutes a nuisance, the only claim made is that indictment would not lie because a misfeasance is charged." The court thought the objection was untenable, saying: "If it (distinction between misfeasance and nonfeasance in nuisance cases) ever had any foundation, it had its origin at a time when corporations were few in number and limited in their power and in the purposes for which they were created. Experience has shown the necessity of essentially modifying it and the tendency of the more recent cases in courts of the highest authority has been to extend the application of all legal remedies to corporations and assimilate them, as far as possible, in their legal duties and responsibilities to individuals. To a certain extent the rule contended for is founded in good sense and sound principle. Corporations cannot be indicted for offences which derive their criminality from evil intention, or which consist in a violation of those social duties which appertain to men and subjects. They cannot be guilty of treason or felony; of perjury or offences against the person. But beyond this, there is no good reason for their exemption from the consequences of unlawful and wrongful acts committed by their agents in pursuance of authority derived from them."

A case of misfeasance in nuisance arose in North Carolina,[4] and the court said: "While railroad corporations and corporations generally are not capable of committing offences, a necessary quality or in-

(1) McKim v. Odom, 3 Bland (Md.) 407.
(2) State v. Great Works Co., 20 Me. 41, 37 Am. Dec. 38.
(3) State v. Portland, 74 Me. 268.
(4) State v. Railroad, 95 N. C. 602.

gredient in which is the criminal intent, still they are indictable for such acts of misfeasance as constitute the nuisances, without regard to intent. Ang. & Ames on Corp., Corp. 394-396; Mor. on Private Corp., sec. 94; 1 Bish. Crim. Law, sec. 105."

In the third edition of Wharton on Criminal Law,[5] issued in 1896, the matter is thus summarized: "In the ancient case of The Abbot of St. Bennett's v. The Mayor, etc., of Norwich (Y. B. 21, Edw. IV, 7, 13), Pigot said *arguendo* that 'a corporation cannot do a personal tort to another, as a battery or wounding, nor can they do treason or felony, so far as the corporation is concerned. Much of the same language is used in the case of Sutton's Hospital (5 Coke's Rep. 253, and in Orr v. Bank (1 Ohio 36) it was expressly ruled that a corporation, as such, could not through its agents be guilty of an assault and battery. And Lord Holt is reported in an anonymous case (12 Mod. 559), to have laid it down generally that 'a corporation is not indictable at all, though its individual members are.' This general proposition of Lord Holt has, however, received considerable qualification in modern time, and is now limited to cases of felonies, assaults, riots and malicious wrongs. We may, therefore, hold that a corporation may be indicted for a breach of duty imposed on it by law, though not for a felony or for public wrongs involving personal violence as riots or assaults. (R. v. Birmingham Ry. Co., 3 Q. B. (1842); State v. Great Works, etc., Co., 20 Me. 41; Mor. on Corp., sec. 94.)"

In Indiana in 1864,[6] the court, first rejecting the claim that the words "every person" in a provision of Indiana Civil Code included a corporation in a criminal prosecution, said: "Independent of this there can be no agency in the commission of misdemeanors. A corporation can only act by agents; the agent and not the principal is the guilty party." The court then followed the 20th Maine case and held that no prosecution lay for misfeasance in nuisance. It concluded its opinion by saying: "Whatever may be the rule in England, and in those states in which the common law as to crimes is recognized, in this state under the criminal law, a corporation cannot be prosecuted for a misfeasance."

As late as 1908 we find an Indiana decision[7] that: "Corporations are indictable only when the legislature has specifically provided that they may be proceeded against." In this case a corporation was proceeded against for forfeiture of its charter in maintaining a gambling house, and it was further said: "The state does not charter corporations to commit crime," and quoted from 2 Waterman Corporations, sec. 381, that: "Every corporation, in accepting its charter, impliedly undertakes and agrees, upon condition of forfeiture, that it will exercise the rights and privileges conferred upon it in furtherance of the objects and purposes of its creation and not otherwise, and that it will so conduct its affairs that it shall not, become dangerous to the safety or well-being of the state or community in and with which it transacts business." Upon this kind of reasoning it was held the trial court erred in sustaining a demurrer to the information in the case.

In Pennsylvania[8] it was ruled that: "No doubt whatever can exist at this day, but that corporations other than municipal may become amenable to the criminal law in the matter of the creation and maintenance of things which amount to or become public nuisances, and to be proceeded against by indictment. 1 Amer. Cr. Law, Sec. 86, 87. As a general rule they are not indictable for misfeasances, unless, indeed they assume the shape of nuisances. Id., sec. 89. For assaults, batteries, riots, larcenies and the like they are not so answerable."

In a still later case in this state[9] a corporation was indicted for manslaughter. The court said, in sustaining a demurrer to

(5) Whart. Cr. L., 10th Ed. Sec. 91.
(6) State v. Railroad, 23 Ind. 362.
(7) State ex rel. v. Hotel Co. 42 Ind. App. 282, 42 N. E. 801.
(8) Canal Co. v. Commonwealth, 60 Pa. St. 367, 100 Am. Dec. 570.
(9) Com. v. Railroad, 24 Pa. Co. Ct. 25.

the indictment: "That a corporation may be indicted for nonfeasances and misfeasances resulting in nuisances and the like is well settled; but we are not aware of any decision that has gone the length of holding that a corporation may be indicted for any crime involving the elements of personal violence and criminal intent and none has been cited. As was suggested on the argument some courts have shown a tendency to enlarge the criminal liability of corporations, but no court has gone as far as we are urged to go in this case. * * * The criminal act alleged here is so far *ultra vires* as to contravene all accepted rules in the criminal law for making it the act of the principal."

A very recent case by New York Court of Appeals[10] shows very clearly the advance made in the views of American courts as to indictability of corporations, but the decision was in favor of the corporation, because the statute for homicide was held by its terms confined to the killing of one human being by another human being. While it may be said that all else in the opinion is *obiter*, what is said well reflects how far departure has gone from what Blackstone said in his Commentaries:[11] "A corporation cannot commit treason or felony or other crime in its corporate capacity; though its members may in their distinct individual capacities." Judge Hiscock said the ruling in New York had been made, in a case involving no criminal intent, that a corporation was indictable for disobedience of a statutory prohibition against doing certain acts, for example, making it a misdemeanor for "any person not a registered physician" to advertise to practice medicine.[12] He then proceeds to say that, though courts have at times "halted somewhat at the suggestion that a corporation could commit a crime whereof the element of intent was an essential ingredient," it has been established that, "with certain limitations" it is neither "unjust or illogical" to hold that it can. The limitations may be considered to be found in this language: "Of course, it has been fully recognized, that there are many crimes so involving personal malicious intent and acts ultra vires that a corporation manifestly could not commit them. Wharton's Crim. Law, 9th Ed., sec. 91; Morawetz on Private Corporations, 2d Ed., sec. 732, et seq. But a corporation, generally speaking, is liable in civil proceeding for the conduct of its agents through whom it conducts its business so long as they act within the scope of their authority, real or apparent, and it is but a step further in the same direction to hold that in many instances it may be charged criminally with the unlawful purposes and motives of such agents while so acting in its behalf."

The judge thereupon cites Bishop in his New Criminal Law section 417, that: "Within the sphere of its corporate activity, and to an undefined extent beyond, whenever it assumes to act as a corporation it has the same capabilities of criminal intent and of act—in other words, of crime—as an individual man sustaining to the thing the like relations."

A very pertinent case illustrative of this principle was decided by the Supreme Court of the United States.[13] In this case a railroad company and one of its officials had been convicted of paying rebates to a shipper, and it was claimed that as no authority was shown by the board of directors or the stockholders the corporation could not be convicted. The court said: "Applying the principle governing civil liability, we only go a step farther in holding that the act of the agent, while exercising the authority delegated to him to make rates for transportation, may be controlled in the interest of public policy by imputing his act to his employer and imposing penalties upon the corporation for which he is acting in the premises. It is true there are some crimes which in their nature cannot be committed by corporations. But there is a large class

(10) People v. Ry. & L. Co., 195 N. Y. 102, 88 N. E. 22, 133 Am. St. Rep. 770, 21 L. R. A. (U. S.) 998.

(11) 1 Bl. Com., p. 476.

(12) People v. Dermatological Institute, 192 N. Y. 454, 85 N. E. 697.

(13) N. Y., etc., R. Co. v. United States, 212 U. S. 481.

of offenses, * * * wherein the crime consists in purposely doing the things prohibited by statute. In that class of crimes we see no good reason why corporations may not be held responsible for, and charged with the knowledge and purposes of their agents, acting within the authority conferred on them." The court concluded that the railroad company was properly convicted.

A Colorado case[14] took a step further in the prosecution of a corporation for employing a child under the prescribed age, ruling that, though the employing agent of a corporation had specific instructions not to violate the statute in this regard, yet as he had the general power of employment, this was like the case of specific instructions not relieving the principal where an act was within his apparent authority, a ruling which well illustrates the evil tendency we will hereinafter undertake to discuss.

Quite a recent case in North Carolina[15] held that a corporation in the hands of the receiver of a court, having full possession of its property and entire charge of its affairs cannot be prosecuted for crimes and misdemeanors committed by the agents and servants of the receiver, on the principle that no man or corporation should be made criminally responsible for acts which he has no power to prevent. In discussing, *arguendo*, the criminal liability of a corporation, the opinion observed, similarly as the New York Court of Appeals and the federal Supreme Court, that such liability was merely an extension of civil liability for malicious wrongs and for fraud, malice and evil intent of corporation agents, on the doctrine of imputability. The case, however, quotes Clark on Corporations, p. 200, as saying: "There are no cases thus far in which a corporation has been held liable criminally for malicious wrongs, or for wrongs involving specific evil intent or for wrongs involving the element of personal violence. On the contrary, actual authority, as far as it goes, is against any such doctrine." The court intimates, however, it sees no good reason why imputability for crime is not as proper as it is for tort.

Summary of Above Cases.—The inference is deducible, that about all of a starting point the American cases have is not from any common law, but from the theory that a corporation clothed with power to abate a nuisance could, as a mere creature of the state, be compelled to abate it. An indictment seemed a reasonable way to do this, and it scarcely lay in the mouth of a creature, whose existence was scarcely known, so far as mere private purposes were concerned, to exist prior to our republic, to object to such form of remedy. It was at most a mere form of speech, to say an indictment meant prosecution of a crime. It may not have meant precisely this in the same way as when procedure was against an individual in this manner. It was easy to advance from nonfeasance to misfeasance in nuisance, for there is hardly a sensible distinction between maintaining and establishing a nuisance, and it is to maintain, if one fails to abate. Nevertheless the idea of criminality went with the form of procedure, and when responsibility for torts was established and extended, such idea took on expansibility, until it is flowering into a criminality broader even than is liability *ex contractu* as affected by the doctrine of *ultra vires*.

A Non Sequitur from Responsibility for Tort.—The only true *rationale* in a corporation's responsibility for wrongs done another by the agents of a corporation is as expressed by the chancellor in McKim v. Odom, *supra*, and to that I have adverted already. Any theory of punishing the principal of an agent, in the case of two individuals, for the evil intent existing alone in the mind of the latter, finds no place in any system of criminal jurisprudence yet devised. Nor does such punishment of a corporation meet the objection mentioned in State v. Great Works, *supra*, that thereby the innocent "become equally amenable to punishment with the guilty." Though a

(14) Overland, etc., Co. v. People, 32 Colo. 263.

(15) State v. Railroad, 152 N. C. 785, 67 S. E. 42.

corporation is, for all purposes of carrying on business, the legal owner of property, yet ultimately all legislation concedes it belongs to its stockholders. It seems even more drastic that imputability of crime should deprive its creditors of their debts. These two considerations seem to take away from the sanction of due process of law clauses abounding, in stereotyped phrase, in quite nearly all American constitutions.

But American courts, deeming that corporations were capturing the country, seem to have forgotten the due process of law principle and the giving one of his day in court before his property should be taken. Indeed, they have gone forward and invented law upon such an indefensible theory as that corporations were more numerous than in older days and were being given greatly more varied powers. They seemed to have been spurred to such invention, because they conceived that modern conditions demanded it, and especially since the hue and cry against trusts.

There never was a more illogical thing to do with respect to trusts. If they could dictate prices, then no penalty upon them could be a punishment, because it could be recouped from the public. If they could not dictate prices, it was an infliction upon thousands of stockholders, when guilty intent was in the minds of ten or a dozen, and the more their guilty intent was overlooked or made secondary, the more might they speculate in criminality, and rejoice in their adeptness and the profit therefrom.

Impolicy in Making Corporations Indictable.—If it be true, that a corporation should be subject to indictment for, let us say, any disobedience of what is prohibited by statute, then, of course, its offences may be deemed to have made it liable criminally, if a majority of its board of directors order them to be committed.

In that case, if a penalty is inflicted, those who oppose the commission of such acts, not only are punished in their property rights, but, unless they actively exert themselves by appealing to the courts to prevent their and stockholders' interests from becoming subjected to criminal fines, they in effect become accessories before the fact to crimes being committed.

In this way the state either surrenders to the power of a criminally disposed majority those directors who may be disposed to observe the law, or make difficult and embarrassing their attempts to do so. An honest director, placed in such a situation, might think he ought to surrender his investment in a corporation rather than enjoy its illegal profits, even if he believed that it would probably pay better, financially, for the law to be violated than observed. The law makes him compromise with his conscience, but the wider such a sentiment extends, the more the inference will arise that corporate franchises become the agencies of the unscrupulous and a temptation for those disposed to do right. The state, however, as is said in State ex rel. v. Hotel Co., *supra*, "does not charter corporations to commit crime," and if it does not, neither should it pursue a policy which abolishes all distinction between those, who would restrain them from crime, or discourage investment in those operations which presumably should enhance the state's prosperity.

That the state does not save innocent directors from the same indiscriminate punishment as falls upon those who launch a soulless machine upon a career of crime, argues either that it is incapable of otherwise preventing the commission of criminal acts by a corporation, or its sense of justice is not cognizant of any distinction between good directors of a corporation and bad directors, so long as the latter are a majority. Therefore it encourages no one to be faithful to the limitations which exclude the commission of crime from charter power.

If a state is incapable of otherwise preventing criminal offenses by corporations, ought it, in moral view, to charter them at all? Or, even, if any investor in corporation stock, minor, trustee and the like, is to have the penalty of another's criminal course visited upon him, the same as on real crim-

inal, is the chartering of corporations consistent with enlightened legislation?

But is the state unequal to the task of preventing corporate criminality without pursuing this unequal course? I will go further and ask, is there not a greatly better plan to pursue, and which both brands the real criminals and inculcates, in the general people, a more discriminating sense of justice?

Let me ask, if any board of directors, who ever started any corporation on a course of criminality, ever was visited with the contempt, commission of the same acts by them as individuals would have entailed? Do they, indeed, when they authorize corporate crime, feel the same contempt for themselves that they ought to feel? On the contrary, the commission of such offences is more apt to be discussed around a council board of directors with respect solely to its financial risk. They become, or tend to become, the soulless intellectual agencies of a soulless non-intellectual machine. When that point is arrived at, law is to them nothing in its majesty, and merely a tyrannical barrier to greed.

But, if a board of directors who authorize or permit a corporation to disobey statutes, are put in jail or are condemned to wear felons' stripes, will they, in any gamble upon violation gathering dividends for others, defy the law's commands? It seems to me, that, if criminal legislation has any deterrent force for violators, who intend to reap the sole benefit of their criminality, it ought to have greatly more effect where they would be committing crime for others to share the profit, with the violators alone to pay the penalty. Whatever else these directors and corporation agents may be, no one has yet accused them of an altruism that would land themselves in the penitentiary for their love of stockholders. It is even a poor sporting proposition.

The Immoral Tendency of Making Corporations Criminals.—The fact, that one may use his authority in the direction of criminal violation without being pilloried as a criminal, with more certainty than the machine he controls, is a derogation from all right thinking. Just think what corporate infraction of law means! Several men get around a council board and, either by specific direction, studied acquiescence or deliberate ratification, uphold an agency they control in its violation of law. Does their act lack a single element of plain defiance, which should not entail the reprobation of honesty? Let us add to this, that they are abusing a trust, and, then, when they feel no disgrace, and the public visits no contempt upon them, what responsibility is there resting on a state for confusion as to moral precepts in the minds of the people?

It may be that in such offenses as nuisance, whether by nonfeasance or misfeasance, it is better that a corporation should be proceeded against directly, but it seems to me that we will come greatly nearer to reducing corporate criminal violation when we get back to the common-law theory, and more convincing will be the thought that nobody can authorize anybody or anything to commit a crime. Then all agents of corporations will be like agents of individuals. If they violate law, there will be no force or power to stand between them and its vindication.

N. C. COLLIER.

St. Louis, Mo.

BOND—ACTION BY THIRD PERSON.

DES MOINES BRIDGE & IRON WORKS v. MARXEN & ROKAHR et al.
No. 16,157

Supreme Court of Nebraska. Oct. 22, 1910.
128 N. W. 31.
Syllabus by the Court.

A board of supervisors in contracting for the construction of a courthouse may lawfully require the contractor to pay for the material used in the erection of said building, and a bond executed to secure the faithful performance of that contract inures to the benefit of a materialman.

Appeal from District Court, Seward County; Good, Judge.

Action by the Des Moines Bridge & Iron Works against Marxen & Rokahr and others.

Judgment for plaintiff, and defendants appeal. Affirmed.

ROOT, J. This is an action prosecuted by a subcontractor upon an undertaking executed by a contractor and his bondsman. The plaintiff prevailed, and the defendants appeal.

The defendants Marxen & Rokahr, in a contract with Seward county, agreed to furnish the material, machinery, appliances, and labor necessary for the construction of, and to construct, equip, and fully build, a courthouse according to plans and specifications attached to said contract and made a part thereof. The contract provided that Marxen & Rokahr should furnish to the supervising architect of the courthouse and to the county, before progress certificates should be issued by the architect or partial payments be made for the work as it progressed, a receipt in full to that date from the parties who had furnished material for said building, and from all mechanics and laborers for work and labor performed upon the structure. It is also provided in the contract that: "Before final settlement, or at any time the proprietor may demand, the contractor must settle all accounts for material delivered or work performed, as per his respective agreement for such material or labor, before further progress certificates are granted or payments of money are made on the contract." At the time the contract was made, the defendants Marxen & Rokahr and the Title Guaranty & Trust Company executed to Seward county a bond in the sum of $30,000, conditioned: "That if the said Marxen & Rokahr shall well and truly keep and perform all the conditions of this contract on their part, to be kept and performed, and shall indemnify and make payment and save the said Seward county harmless as therein stipulated, then this obligation shall be of no effect," etc. The plaintiff furnished Marxen & Rokahr material that was used in the construction of the courthouse. Marxen & Rokahr failed to pay a large part of the plaintiff's claim, and the board of supervisors by resolution called upon them to pay the plaintiff's bill and any other valid unpaid claims on account of the construction of the courthouse.

The defendant the Title Guaranty & Trust Company contends there is no proof that the bond was approved by the board of supervisors of Seward county, and for that reason the undertaking did not become a valid obligation. In so far as the plaintiff is concerned, the bond is a common-law obligation, and a formal approval is not necessary for the purposes of this action. The trust company admits in its answer that the bond was executed and delivered, and its argument is not well taken.

In exhaustive, well-reasoned arguments in the briefs and at the bar, the defendants contend that since the plaintiff is not named in the undertaking, and the contracting parties did not know, when the bond was executed, that the Des Moines Bridge & Iron Works would furnish any material to Marxen & Rokahr, and because the county of Seward, the obligee in the bond, is under no legal or equitable obligation to the plaintiff or to any other materialman or subcontractor, this action cannot be maintained, but that the undertaking should be construed merely as a statutory bond for the protection of laborers and mechanics. It may be conceded that many authorities sustain the argument advanced, but an oposite conclusion was announced by this court in Sample v. Hale, 34 Neb. 220, 51 N. W. 837; Lyman v. City of Lincoln, 38 Neb. 794, 57 N. W. 531; Doll v. Crume, 41 Neb. 655, 59 N. W. 806; Kaufmann v. Cooper, 46 Neb. 644, 65 N. W. 796; Korsmeyer P. & H. Co. v. McClay, 43 Neb. 649, 62 N. W. 50; and Morton v. Harvey, 57 Neb. 304, 77 N. W. 808. The controlling facts in Lyman v. City of Lincoln, supra, are parallel with the facts in the instant case. Counsel suggest that the argument made by them in the case at bar was not presented to this court in the cases just cited. While the opinions may not advise the reader that the court received the benefit of an argument along the lines pursued by defendants' counsel in the instant case, the briefs filed in Doll v. Crume, supra, show that such an argument was made with great force and learning. It is apparent, therefore, that the court was duly advised concerning the principles now contended for by defendants' counsel.

It is better that the law with respect to contracts should be certain than that it should in all particulars conform to the views of the courts of some of our sister states. The defendants in the case at bar must have contracted with reference to the law as announced in the cited cases, and the defendant bonding company must have known that it was assuming an obligation to pay the subcontractors and materialmen as well as the laborers and mechanics engaged in constructing the courthouse referred to. The plaintiff in contracting to furnish material for the courthouse also had a right to rely upon the law repeatedly stated by this court, and should not be deprived of the defendants' obligation to pay for that material because a like bond could not be enforced in the state of New York. We are not convinced that we should overrule a long line of our decisions,

and shall not do so in the instant case. City of Wahoo v. Nethaway, 73 Neb. 54, 102 N. W. 86.

Counsel for the defendants argue that the principle they are contending for was recognized in the opinion of Judge Holcomb in Frerking v. Thomas, 64 Neb. 193, 89 N. W. 1005. It is true that the New York cases were referred to with approval in Frerking v. Thomas, supra; but that case does not involve a contract like the one considered in the instant case or those construed in Sample v. Hale and Lyman v. City of Lincoln supra; nor was there any intention on our part in accepting Judge Holcomb's opinion to discredit the law announced in the cited cases.

The defendant bond company's undertaking was given for the benefit of the materialmen who might furnish materials for the construction of the courthouse as well as for the protection of the laborers and mechanics who should work upon that building. The bond company contends that it should be released from all liabillity because the county did not require Marxen & Rokahr to produce receipts showing that the materialmen and laborers had been paid for material furnished and for services performed, and alleges that payments were made in excess of the 85 per cent. provided for in the contract. The plaintiff had no control over the board of supervisors, and the conduct of that board will not prejudice the plaintiff's right to sue the bond. Doll v. Crume, 41 Neb. 655, 59 N. W. 806; Getchell & Martin, L. & M. Co. v. Peterson & Sampson, 124 Iowa, 599, 100 N. W. 550; Reynolds v. Banhagel, 151 Mich. 40, 114 N. W. 669.

Finally, the bond company urges that it is a surety for Marxen & Rokahr, and that the clerk should have so certified upon the judgment record conformable to section 511 of the Code. The judgment first entered was joint and several against all of the defendants. The bond company subsequently moved the court to modify the judgment and in its motion set out the form of journal entry it desired the clerk of the court to make. The court sustained the motion, and the record was modified according to the suggestions made by said defendant. We think, under the circumstances, the bonding company should not be heard to complain. Drexel v. Pusy, 57 Neb. 30, 77 N. W. 351.

There is no conflict in the evidence concerning the amount due the plaintiff from Marxen & Rokahr on account of the material furnished for the Seward county courthuse. The trial judge followed the law as announced years since by this court.

There is no error in the record prejudicial to the defendants, and the judgment of the district court is affirmed.

REESE, C. J., not sitting.

NOTE.—*Duty of Public Bodies as to Public Works, Validating Contracts in the Interest of Third Persons.*—The opinion in the principal case seems to us to feel under necessity to express its dissent from a well-recognized principle, which is well set forth in the Frerking case, when the better basis to have placed its conclusion upon was the interest and the duty of a public body in such a provision as was discussed, such interest and duty being sufficient to constitute an exception to the principle. We will first quote from some cases on the general principle.

In Frerking v. Thomas, *supra*, Judge Holcomb said: While it is true that an agreement may be made for the benefit of a third person and enforced by the latter, though not a party to the consideration (Morrill v. Skinner, 57 Nebr., 1647, and authorities there cited), the rule does not, however, extend to entire strangers, who are not in privity with, nor in any wise related to, the parties to the transaction so had. Says the court of appeals of New York in Vrooman v. Turner, 69 N. Y. 280, 283: "To give a third party who may derive a benefit from the performance of the promise an action, there must be, first, an intent by the promisee to secure some benefit to the third person; and, second, some privity between the two, the promisee and the party to be benefitted, and some obligation or duty owing from the former to the latter, which would give him a legal or equitable claim to the benefit of the promise, or an equivalent from him personally.' See also, Embler v. Hartford Steam Boiler Ins. Co., 158 N. Y. 431, 44 L. R. A. 512; Klauer v. Sheffield (Minn.), 80 N. W. 1055."

The Vrooman case, *supra*, concerned an assumption by a grantee of a mortgage as part of the consideration, and it was held he was not liable for a deficiency upon foreclosure sale where the grantor was neither legally nor equitably liable for its payment. In addition to the above extract, it was said: "It is true there need be no privity between the promissor and the person claiming the benefit of the undertaking, neither is it necessary that the latter should be privy to the consideration of the promise, but it does not follow that a mere volunteer can avail himself of it. A legal obligation or duty of the promisee to him will so connect him with the transaction as to be a substitute for any privity with the promissor, or the consideration of the promise, the obligation of the promisee furnishing an evidence of the intent of the latter to benefit him and creating a privity by substitution with the promissor. A mere stranger cannot intervene, and claim by action the benefit of a contract between other parties. There must be either a new consideration or some prior right or claim against one of the contracting parties, by which he has a legal interest in the performance of the agreement."

In the Embler case *supra*, three of the seven judges applied the ruling in the Vrooman case to an indemnity policy to an employer, reciting that loss for injury or death was "payable to the assured for the benefit of the injured person

or persons, or their legal representatives in case of death, and not contingent upon the legal liability of the assured." The other four judges concurred specially on another ground. Gray, J., speaking for the three, laid some stress on the fact that the employee was not such when the policy was issued, saying that *then* "there was no relation of debtor and creditor; nor any obligation or duty owing" from the assured to him. It was not said that, had the employee been such at the time, his legal representatives could not have sued upon the policy.

There exists a relationship entitling the bailee of goods to effect insurance, which in case of loss is recoverable according to the policy, for the benefit of his bailors, as has been often held, and they may sue thereon, even though bailors were not such at the time, if the policy was meant to adjust itself to changing conditions, and this, though the bailors were ignorant of the existence of the insurance. Johnston v. Abresch Co., 123 Wis. 130, 101 N. W. 395, 68 L. R. A. 934, 107 Am. St. Rep. 995. See also Lucas v. Ins. Co., 23 Va. 258, 48 Am. Rep. 383; Lancaster Mills v. Merchants, etc., Co., 89 Tenn. 1, 24 Am. St. Rep. 586; Western, etc., Pipe Lines v. Ins. Co., 145 Pa. St. 346, 27 Am. St. Rep. 703; Roberts v. Ins. Co., 165 Pa. St. 55, 44 Am. St. Rep. 642

The principle upon which the promise for the benefit of third persons in building contracts for public buildings is deemed enforceable, is stated in Gypsum Co v. Gleason, Wis., 116 N. W. 238, to be that: "Such agreements are declared to be promotive of a just protection to such third persons, and as operating to protect municipalities by securing more responsible dealers and better materials, and as tending to promote justice and equity between all parties contributing to the erection of such buildings."

The above reasoning was supplemented in a prior Wisconsin case by the court saying that these contracts "secure protection of the public interests and of the persons whose property and labor have been applied to public uses." Connor Co. v. Olson, 115 N. W. 811. Judge Cooley has placed the validity of such an agreement, and its consequent enforceability by third persons intended to be benefitted, upon a duty owing by public bodies contracting for public work. He thus spoke: "A corporation when constructing a public building or other public work, is chargeable with moral duty, as an individual would be, to see that it is so constructed that people may not be injured in coming near to or making use of it in a proper manner. In some cases they may not be legally responsible for failure to perform this duty, but where the moral obligation exists, it cannot be said that any provision for its performance, not improper in itself, is ultra vires. A county may go to great pains and great expense to make its court house unquestionably safe. But if it may do this, it would be very strange, if it were found lacking in authority to stipulate, in the contract for the building, that the contractors, when calling for payment, shall show that they are performing their obligations to those who supply labor and material, and that the county is not obtaining the building at the expense of a few of its people." Kamp v. Swaney, 56 Mich. 345, 23 N. W. 162, 56 Am. Rep. 397.

In Missouri its supreme court thus spoke: "Is the requirement of the contract and the condition of the bond, that laborers and material men shall be paid a proper and reasonable incident to the express power to improve the streets by contract and to require a bond of the contractor? We think it is, even aside from any moral obligation the city was under to protect the laborers and materialmen. Such a requirement gives credit to the contractor and enables him to secure labor and purchase material more readily and on better terms than could be done without the credit. Thus the contractor can secure better labor and cheaper materials, and is enabled to take the contract on lower terms than he could otherwise safely do. It also enables one with small means and limited credit to compete with those more advantageously circumstanced. The city is thus enabled to secure greater competition in bidding and to obtain better execution of the work at lower terms. It was not only to the interest of the city, but its plain business duty, to secure those advantages." Glencoe Lime & Cement Co. v. Von Phul, 133 Mo. 561, 34 S. W. 843, 54 Am. St. Rep. 695. This ruling was later approved in 144 Mo. 671, 46 S. W. 625.

In Philadelphia v. Stewart, 195 Pa. 309, 45 Atl. 1056, the court discussing a similar provision in a bond, said: "There is nothing *ultra vires* or contrary to public policy in this condition; it is the right as well as the interest of the city to secure good work upon its contracts for public improvements, and there is no better policy towards that end than to satisfy competent workmen that they can rely on being paid. There being no right of mechanics' lien against public works, the work and material men are, to that extent, in the contractor's power as to pay, and that fact has a natural tendency to produce skimped work and inferior materials by the class of men willing to run that risk. Against this risk the city is entitled to protect itself by exacting assurance from the contractor that he will pay his honest debts incurred in doing the city's work." See Philadelphia v. Nichols, 214 Pa. 265, 63 Atl. 886; Parker v. Jeffrey, 26 Or. 186, 37 Pac. 712; Hipwell v. Surety Co., 130 Iowa, 656, 105 N. W. 318; State ex rel. v. Palmer, 20 Mont. 219, 50 Pac. 558.

So run many other cases, where, as in many states, the matter is not provided for by statute. Out of the exemption of public works from mechanics' lien would arise a serious disadvantage, unless it could be provided against, and the courts recognizing this has evolved the theories of duty to the public and to particular individuals thereof, and that contracts will be better complied with. It would seem that if it is to the interest of promisee, both because public works are let upon competitive bidding, and that the provision secures or tends to secure better performance, its validity should be established because it pertains to the promisee securing what he contracts for. But this is not a theory under old decisions. That concerned some duty or privity between the promisee and the third person. The other disregards the third person, but promisee is simply seeking his own benefit. If, however, the provision should be declared invalid in favor of the third person, this makes the

promisee unable to contract adequately for his own protection. As, however, the promissor agrees to whatever is proper and necessary for the promisee's interests, it should not lie in his mouth to object to the want of duty to, or privity with, the third person. As is seen, the cases discuss also the *ultra vires* question, but that is wrapped in the theory that by such provisions the public body is inserting them in its own interest. C.

BOOK REVIEWS.

FEDERAL PENAL CODE OF 1910. ANNOTATED.

Mr. George F. Tucker, joint author of "Gould and Tucker's Notes on the United States Statutes" and Mr. Charles W. Blood, of the Boston Bar, have annotated the Federal Penal Code of 1910 as codified under Act of Congress of March 4th, 1909, and issued same in ordinary code size together with an appendix of other statutes having penal provisions in force December 1st, 1908.

The sections of the penal code including "Chapter XV Repealing Provisions" consists of only 345 sections and standing unannotated would take up not more than one-fifth of the space in the volume. A profuse annotation makes up the remainder, but the volume is withal not unwieldy, having with Table of Cases Cited; Table of Statutes Cited; Table of Repealed Statutes; Appendix; Table of Contents and Index, less than 550 pages.

The sections are given in smaller type with new numbering and the annotation always showing their numbering in the Revised Statutes, is in larger type.

To give an illustration of the thorough annotation we will take Section 1 of Chapter One, "Offenses Against the Existence of the Government." This section contains less than five lines. The annotation covers three and one-half pages and contains as many as thirty-five citations to authority on its construction. It is seen, therefore, how pleasurable is the make-up of the volume as distinguished from those which put the text of statutes in large, and the notes in small, type.

The eye that is making a critical examination of a statute for its own interpretation does not care so much for the size of type, as when it is running down, in a glancing way, an annotation to see whether it touches a particular question in mind. To laboriously peruse a column of fine print and find at the end there is nothing there that was sought for is not very refreshing to a jaded or hurried investigator and makes him also fear that it was there and escaped him. The large typed note we instanced we also notice has subheads of particular words in the section, and otherwise paragraphed.

Mr. Tucker enjoys a widespread reputation for his and Mr. Gould's notes and when we add to their value, so far as the penal code proper is concerned, the Appendix of other statutes having penal provisions, also annotated, it is easily deduced, that the volume we are reviewing should be deemed almost indispensible.

The binding is in law buckram, the book has the usual marginal references to sections and the typography and paper are excellent. The volume is published by Little Brown & Company Boston, 1910.

HISTORY OF THE SHERMAN LAW—BY ALBERT H. WALKER OF NEW YORK BAR.

This compact volume, 8vo. size, of 320 pages, treats very interestingly of the enactment of the celebrated act known as "The Sherman Law," and of attempts to enforce it, more often abortive than successful, during the twenty years of its existence. The cases decided in the highest and lower federal courts are discussed with discriminating clearness, and the forecasting as to important cases pending in the federal supreme court shows a lawyerlike analysis of what this is based upon.

This forecasting deals with changes in the personnel of our great court and has about it much that does not pertain to a mathematical demonstration, but its greatest merit consists in enabling us to judge how much further we will have advanced when those cases shall have been decided.

This treatise is, upon the whole, very readable and instructive and the style of the author adds much to the attractiveness of the work.

The volume is bound in cloth, the typography excellent and published by The Equity Press, New York, 1910.

AMERICAN STATE REPORTS, VOL. 133.

This volume contains selected cases from Alabama, Colorado, Idaho, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Oregon, Pennsylvania, South Dakota, Texas, Washington and Wisconsin, twenty-one in all and from all parts of the country.

The annotations refer to a great variety of subjects, for example: Assessments for Local Improvements, Conveyances from Husband to Wife, Insurance, Judgments, Limitation of Actions, Pleadings in Respect to Denials on Information and Belief, Conditional Sales, Services Rendered by Persons Living in Same Family, Trade Secrets and others.

These annotations are so justly celebrated for their thoroughness and discrimination, that these features need no special mention.

This volume is of the full ordinary size and with the calf binding of the set. This series of the "Trinity Reports" comes from the well-known publishing house of Bancroft-Whitney Company, San Francisco, 1910.

HUMOR OF THE LAW.

John T. Fleming, an assistant state's attorney on Mr. Wayman's staff, was a member of the legislature a few years ago, and last week, when confessions of bribe-taking by present members of the general assembly were coming in about one a day, some of Mr. Fleming's associates were having fun with him on the basis of his past service as a lawmaker.

"I confess that I was a member of the legislature at one time," said Mr. Fleming to his baiters, "but I point with pride——"

"He points with pride," interposed Charley Furthman, after the manner of the chorus in light opera, "he's naught to hide."

"I point with pride," resumed Mr. Fleming, standing erect and swelling out his chest alarmingly, "to the statute of limitations."—Chicago Post.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Abatement and Revival**—Personal Liability for Torts.—In absence of statute the estate or property of decedent cannot be held liable for his torts or wrongs, which are buried with his body, and, there being no statute in this state providing for the survival of such causes of action, actions do not lie therefor against a personal representative.—Wynn v. Tallapoosa County Bank, Ala., 53 So. 228.

2.——Statutes.—Statutes intended to aid the survival of actions are remedial, and are liberally construed, but statutes in aid of the survival of causes of action are in derogation of the common law, and will be construed strictly.—Wynn v. Tallapoosa County Bank, Ala., 53 So. 228.

3. **Adverse Possession**—Deeds.—A will does not as to land conveyed by testator the day before his death and on the same day on which his will was made constitute color of title under which a life tenant or remainderman therein could prescribe against the successors in title of the grantees.—Heatley v. Long, Ga., 68 S. E. 783.

4. **Arbitration and Award**—Right to Vacation.—A party to arbitration proceedings, not bringing himself within Rev. Code 1905, § 7699, held not entitled to a vacation thereof.—Hackney v. Adam, N. D., 127 N. W. 519.

5. **Attorney and Client**—Attorney's Lien.—An attorney's lien for services can be enforced only in behalf of a lawyer, and not for a corporation, which cannot practise law.—In re Bensel, 124 N. Y. Supp. 726.

6. **Bankruptcy**—Accounting.—A lessee of a corporation's assets, under a lease void as against the corporation's creditors, held subject in bankruptcy to account only for net profits.—In re Medina Quarry Co., 179 Fed. 929.

7.——Acts of Bankruptcy.—A bankrupt, having admitted its inability to pay its debts and its willingness to be adjudged a bankrupt, held subject to the adjudication, though not insolvent.—In re Northampton Portland Cement Co., 179 Fed. 726.

8.——Claim by Third Person.—A third person, in possession of goods alleged to belong to the bankrupt, claiming under color of title, held entitled to retain possession until dispossessed by a plenary suit.—In re Jackier, 179 Fed. 720.

9.——Claims Provable.—Where bondholders of a corporation assigned their bonds to a committee and accepted in exchange stock and bonds of a new corporation, there was no novation precluding allowance as a claim against the bankrupt's estate of the difference between the amount of the bonds used to purchase the bankrupt's assets and their par value.—In re Medina Quarry Co., 179 Fed. 929.

10.——Conditional Sale Contract.—Where machinery was sold to a bankrupt under a conditional sale contract, it was not material that the contract was not signed until six months after the goods were delivered, and that the agreement was secret.—In re C. K. Hutchins Co., 179 Fed. 864.

11.——Discharge.—Neither the action of a creditor in opposing a bankrupt's discharge on the ground that he obtained credit on a materially false statement nor a finding by the court thereon, that the bankrupt had not been guilty of any act which barred his right to a discharge, is a bar to a subsequent action by the objecting creditor against the bankrupt for deceit based on the same false statement.—Talcott v. Friend, 179 Fed. 676.

12.——Evidence.—In hearing before referee in bankruptcy as to claim of bankrupt's wife, her testimony held competent.—In re Carpenter, 179 Fed. 743.

13.——Examination of Bankrupt.—An alleged bankrupt cannot be subjected to examination on written interrogatories before adjudication at the instance of petitioning creditors.—In re Thompson, 179 Fed. 874.

14.——Examination of Third Person.—Where a creditor desires to take the evidence of a non-resident in support of specifications of objection to a bankrupt's discharge, he may take the witness' deposition.—In re Robinson, 179 Fed. 724.

15.——Finding of Special Master.—Finding of fact by special master will not be set aside, though the judge might have come to a different conclusion from the evidence.—In re Schwartz, 179 Fed. 767.

16.——Homestead Exemption.—Property occupied by a widower, the head of a family, as a home, was properly set aside to him in bankruptcy as a homestead, exempt from forced sale.—In re Mussey, 179 Fed. 1007.

17.——Involuntary Proceedings.—A judge of a court of bankruptcy has no authority to make a general reference to a referee of the issues joined on a petition in involuntary bankruptcy, and should dispose of jurisdictional issues by direct hearing, if possible, as a condition precedent to inquiry upon the other issues raised.—In re Kink, 179 Fed. 694.

18.——Lease to New Corporation.—A sale and lease of the assets of a bankrupt corporation to another company organized to take over its assets, but with intent to hinder, delay, and defraud its general creditors, held, void in bankruptcy.—In re Medina Quarry Co., 179 Fed. 929.

19.——Liens of Property of Bankrupt.—Execution for fine for illegal liquor selling held to

be stayed pending bankruptcy proceedings.—In re Green, 179 Fed. 870.

20.——Life Insurance Policies.—Where a bankrupt's creditor held life insurance policies having no surrender value as collateral security, and the creditor and the trustee could not agree as to their value, the creditor was entitled to have the value fixed by litigation before the referee, and to dividends on the balance of the debt.—In re Davison, 179 Fed. 750.

21.——Petitions.—Where, after answer filed to a bankruptcy petition, it was amended, and an additional act of bankruptcy charged which was admitted, the adjudication would be based on the amendment without determining the sufficiency of the answer.—In re Cleary, 179 Fed. 990.

22.——Preference.—The acceptance of a conveyance of property from a banker in payment or as security for a sum converted by him to his own use, with knowledge of his insolvency, held an election to treat the conversion as creating an indebtedness and the receipt of a preference thereon which was voidable at suit of the grantor's trustee in bankruptcy.—Atherton v. Green, 179 Fed. 806.

23.——Preferences.—President of corporation held not a "person benefited" by the assignment of a mortgage payable to the corporation within the bankruptcy law.—Page v. Moore, 179 Fed. 988.

24.——Preferences by Partners.—Trustee of bankrupt firm held not entitled to recover a preference within a showing of individual insolvency of the partners when the preference was given.—Worrell v. Whitney, 179 Fed. 1014.

25.——Proceedings to Establish Lien.—A petition filed in a court of bankruptcy praying that petitioner be adjudged a creditor of a bankrupt and entitled to priority of payment from the proceeds of certain lands, cannot be treated as a bill in equity to establish a resulting trust in such lands which would be inconsistent with the relief prayed for.—Teter v. Viquesney, 179 Fed. 655.

26.——Property in Hands of Third Persons.—A referee in bankruptcy has power to require a third person to show cause why property in his hands alleged to belong to the bankrupt should not be delivered to the trustee.—In re Famous Clothing Co., 179 Fed. 1015.

27.——Right to Discharge.—Where, after a bankruptcy adjudication against a firm, one of the partners became a voluntary bankrupt, it was not a valid objection to the latter's discharge that another partner obtained goods for the firm by false representations in which the petitioning partner did not participate.—Frank v. Michigan Paper Co., 179 Fed. 776.

28.——Right to Discharge.—Where a bankrupt conveyed certain real estate to his wife in 1894, the fact that he continued to live thereon with her and to perform services for her with reference thereto held not to raise a secret trust, available to the bankrupt's credit in resistance of a discharge.—In re Wermuth, 179 Fed. 1009.

29. **Banks and Banking**—Fraud of Cashier.—Where the cashier of a bank draws checks of a company of which he is treasurer, payable to the bank and presents them as treasurer to himself as cashier, and misappropriates the proceeds thereof, the bank cannot base thereon a claim of liability in its favor against the company.—Emerado Farmer's Elevator Co. v. Farmers' Bank of Emerado, N. D., 127 N. W. 522.

30.——Liability of Cashier to Bank.—A cashier is not a trustee in a strict sense, and though in his dealings with the public he is the bank's agent, he is held as to it like a trustee; yet if he wrongfully acquires its funds and invests them in his own name, it cannot fasten a trust or lien on the property as in case of a real trustee.—Wynn v. Tallapoosa County Bank, Ala., 53 So. 228.

31. **Bills and Notes**—Indorsement.—A third person indorsing a check for the sole purpose of guaranteeing payment becomes a surety thereon.—Preston v. Dozier, Ga., 68 S. E. 793.

32.——Indorsement.—A bank, to which a check had been sent under an unrestricted indorsement of the payee, held entitled to assume that its endorsee had authority to transfer title, and hence was entitled to recover from the drawer, who stopped payment, on account of the insolvency of the bank to which the check was first indorsed.—United States Nat. Bank v. Amalgamated Sugar Co. 179 Fed. 718.

33.——Negotiability.—A note containing special stipulations and payable on a contingency is not negotiable.—Klots Throwing Co. v. Manufacturers' Commercial Co., 179 Fed. 813.

34. **Brokers**—Commissions.—Real estate agent who produces a purchaser held entitled to his commission, though without fault of the principal the transaction is not consummated.—Minder & Jorgenson Land Co. v. Brustuen, S. D., 127 N. W. 546.

35.——Duty to Compensate.—Defendant, having contracted to pay for plaintiff's services in a real estate transaction, could not by the form in which the transaction was completed impair his obligation to pay.—Lamar v. King, Ala., 53 So. 279.

36. **Carriers**—Claims Against.—Under the statute requiring claims against carriers to be "filed" with the agent at the point of destination, a "verbal" complaint about the loss of goods held insufficient to obtain the statutory penalty for failure to adjust the claim within the statutory period.—King v. Atlantic Coast Line R. Co., S. C., 68 S. E. 769.

37.——Custom as to Receiving Shipments.—Failure of a shipper to observe a custom of a carrier as to the time within which shipments would be received held immaterial, where the shipment was in fact received.—Central of Georgia Ry. Co. v. Butler Marble & Granite Co., Ga., 68 S. E. 775.

38.——Interstate Commerce Regulations.—A ticket issued to a passenger by a carrier in violation of orders of the Commerce Commission confers no right to passage, and such passenger may be ejected.—Melody v. Great Northern Ry. Co., S. D., 127 N. W. 543.

39.——Shipment of Live Stock.—A shipper of live stock failing to accompany the animals and feed and care for them as provided by contract could not recover for resulting damages from the carrier.—Southern Ry. Co. v. Tollerson, Ga., 68 S. E. 798.

40. **Commerce**—Employer's Liability Act.—A sectionhand working on the track of a railroad over which both interstate and intrastate traffic is moved is employed in interstate commerce within the meaning of Employer's Liability Act and within the protection of such act.—Zikos v. Oregon R. & Nav. Co., 179 Fed. 893.

41.——Interstate Commerce.—Telegraph business is interstate commerce, and the telegraph company is engaged in interstate commerce.—Postal Telegraph-Cable Co. v. City of Mobile, 179 Fed. 955.

42.——Subjects of Regulation.—Under Interstate Commerce Act as a general rule a "common arrangement" between carriers is established by proof of a shipment under a through bill of lading and a continuous interstate carriage thereunder, coupled with proof of concerted action among the connecting carriers with regard to the payment of the charges and the receipt and movement of the traffic.—Standard Oil Co. of New York v. United States, 179 Fed. 614.

43. **Conspiracy**—Evidence.—In a prosecution for a conspiracy to defraud the United States, the government is not required to prove that all overt acts alleged were committed, nor that all the defendants named in the indictment were engaged in the conspiracy.—Jones v. United States, 179 Fed. 584.

44. **Contempt**—Findings of Fact.—A court cannot adjudge a person in contempt without making findings of fact showing that he is guilty.—Hoffman v. Hoffman, S. D., 127 N. W. 478.

45. **Contracts**—Breach.—Where a contractor without cause quits his work, or makes no effort in good faith to perform it, he cannot recover on his contract.—Edmunds v. Welling Or., 110 Pac. 533.

46.——Burden of Proof.—To recover on a special count for services rendered, the burden was on plaintiff to show that everything had been done on which payment was conditioned —Lamar v. King (Ala.), 53 So. 279.

47.——Delivery.—Acceptance of a written contract with intent to assume its benefits and burdens is essential to a legal delivery of it.—New York Life Ins. Co. v. Manning, 124 N. Y. Supp. 775.

48.——Estimates by Third Persons.—A party to a contract may stipulate that the estimate of the work done and the amount due shall be made by a third person and shall be final.—Williams v. Mount Hood Ry. & Power Co. (Or.), 110 Pac. 490.

49.——Modification.—A third person may be substituted in the place of a party to a contract, and, when so substituted, the rights remain the same.—Minder & Jorgenson Land Co. v. Brustuen (S. D.), 127 N. W. 546.

50.——Pleadings and Proof.—While the terms of a contract must be substantially proved as alleged yet only substantial and material variances between the pleadings and the proof will be regarded.—Mutual Fire Ins. Co. of Montgomery County v. Ritter (Md.), 77 Atl. 388.

51. **Conversion**—Community Property—Where community property was condemned, the award did not become realty under the doctrine of equitable conversion, but was personal property which the husband could manage and alienate, though the wife was living apart from him for his fault.—In re Blewett St. (Wash.), 110 Pac. 549.

52.——Sale of Land.—A direction to an executor to sell decedent's property and pay the proceeds to the widow works a conversion.—Sears v. Scranton Trust Co. (Pa.), 77 Atl. 423.

53. **Corporations**—Indorsement of Note.—Indorsement of a note by a corporation payee, signed by the vice president and general manager and the secretary held sufficient without the corporate seal or resolution of the board of directors.—Ramboz v. Stansbury, Cal., 110 Pac. 472.

54.——Insolvency.—Debtor of insolvent corporation, knowing of insolvency and of application for receiver, may purchase claim against corporation pending application, and set it off against the receiver.—United States Brick Co. v. Middletown Shale Brick Co. (Pa.), 77 Atl. 395.

55.——Partnership Relation.—A corporation chartered to buy and sell grain, etc., for its customers, cannot form a partnership relation with another.—Stephens v. Gall, 179 Fed. 938.

56.——Receivers.—A receiver of a firm or corporation not being liable for a tort committed by it before his appointment cannot be sued for personal injuries negligently and previously inflicted by it.—Emory v. Faith (Md.), 77 Atl. 386.

57.——Right to Do Business in Foreign State.—State has the power, subject to constitutional limitations, of prescribing the terms upon which foreign corporations may do business within its limits.—Reed v. Todd, S. D., 127 N. W. 527.

58.——Trade Name.—A corporation may, by user, acquire a right to a trade-name other than its corporate name, but such name is not a corporate name.—Rome Machine & Foundry Co. v. Davis Foundry & Machine Works (Ga.), 68 S. E. 800.

59. **Courts**—Adjournment.—Although a circuit court had adjourned during a term without settling a day for convening, yet it could convene and transact business where due notice had been given.—Ex parte Harrell (Or.), 110 Pac. 493.

60. **Criminal Evidence**—Admissibility.—In a prosecution for murder, the fact that the officer who searched defendant's premises and found certain shoes did not have a search warrant did not render evidence as to those shoes inadmissible.—Pope v. State (Ala.), 53 So. 292.

61. **Criminal Law**—Confessions.—An admission of a fact which, in connection with other facts, may show the commission of an offense, is not a confession.—Reid v. State (Ala.), 53 So. 354.

62.——Conspiracy.—Where an alleged conspiracy to defraud the United States contemplated various overt acts, and the consequent continuance of the conspiracy beyond the commission of the first one, each overt act gives a new, separate, and distinct effect to the conspiracy, and constitutes another crime, and a prosecution is not barred until three years after the last overt act averred in the indictment.—Jones v. United States, 179 Fed. 179.

63.——Embezzlement by Partner.—While a partner could not embezzle partnership property, a charge that a partner may be guilty of embezzling firm funds was harmless error, where there was no evidence that accused had embezzled funds of a firm of which he was a member.—State v. Hogg (La.), 53 So. 225.

64.——Expert Testimony.—One need not qualify as an expert to testify whether particular liquor is whisky.—Treadwell v. State, Ala., 53 So. 290.

65.——Locality of Offense.—Persons accused of conspiring to violate the "bucket shop" law in the District of Columbia held properly tried there if they participate in overt acts there, though the unlawful agreement was made elsewhere.—United States v. Campbell (D. C.), 179 Fed. 762.

66. **Criminal Trial**—Instructions.—The court is under no duty to charge the jury that there is no evidence of a given fact in the case.—Thrasher v. State (Ala.), 53 So. 256.

67. **Damages**—Evidence.—That stock which has no market value sold at a certain date for a price below its book value at an earlier date does not justify the inference of a loss to the holder during the intervening period.—American Exch. Nat. Bank v. Goubert, 124 N. Y. Supp. 817.

68.——Predisposition to Disease.—One suffering from a disease, or predisposition to disease, may recover for the aggravation of such condition by another's negligence.—Bloomquist v. Minneapolis Furniture Co. (Minn.), 127 N. W. 481.

69. **Divorce**—Alimony Pendente Lite.—In a suit for divorce, while the general rule is that alimony pendente lite will be allowed, and the merits of the case not inquired into, yet, where respondent denies the existence of the marriage, he may introduce evidence in support of

such claim to defeat the application therefor.—Ex parte Jones (Ala.), 53 So. 261.

70. **Embezzlement**—What Constitutes.—Property unlawfully taken cannot be the subject of embezzlement. It must be lawfully taken or received by the accused to become so.—State v. Kimball, Del., 77 Atl. 412.

71. **Eminent Domain**—Public Service Corporation.—One public service corporation may condemn a portion of the right of way or property of another when it may be taken without material detriment or injury to the claimant corporation.—State v. Superior Court of King County (Wash.), 110 Pac. 428.

72. **Equity**—Jurisdiction.—On a mere allegation of fraud in a chain of title, equity has no jurisdiction to determne the rghts of adverse claimants to land.—Chambersburg Borough School Dist. v. Hamilton Tp. School Dist. (Pa.), 77 Atl. 414.

73.——Laches.—That laches may bar suit in equity, it must appear inequitable to permit claimant to assert his alleged right.—Stuart v. Holland, 179 Fed. 969.

74. **Evidence**—Judicial Notice.—The court takes judicial cognizance of the classification and rates of the railroad commission.—Central of Georgia Ry. Co. v. Butler Marble & Granite Co., Ga., 68 S. E. 775.

75.——Mechanics' Lien Claims.—No proof of the genuineness of the signature to either the claim or the verification is a necessary preliminary to the admission in evidence of a lien properly verified and filed.—D. I. Nofziger Lumber Co. v. Solomon, Cal., 110 Pac. 474.

76. **Exchange of Property**—Fraud.—Where, by a husband's false representations, plaintiff was induced to convey certain real estate to his wife in exchange for corporate stock, the conveyance being for the benefit of the husband, the wife was not a bona fide purchaser for value.—Sheer v. Hoyt, Cal., 110 Pac. 477.

77. **Executors and Administrators**—Pleadings.—Where an administrator, suing as such in the state of his appointment, recovers judgment, the original cause of action in favor of his intestate is merged therein, and the judgment constitutes a new cause of action in favor of himself personally, on which he may sue in his own name in any state where the debtor is found.—Moore v. Kraft, 179 Fed. 685.

78. **Fire Insurance**—Action on Policy.—In a suit on a fire insurance policy, held proper to introduce in evidence, under the plea of non est factum, letters from defendant as to the loss, which admitted the issuance of the policy sued on.—Mutual Fire Ins. Co. of Montgomery County v. Ritter (Md.), 77 Atl. 388.

79.——Waiver.—Insurer waives conditions precedent by doing anything inconsistent with an intention to insist on strict compliance therewith.—Citizens' Mut. Fire Ins. Co. of Cecil County v. Conowingo Bridge Co. (Md.), 77 Atl. 378.

80. **Forgery**—Proof Required.—To convict of forging a draft, signed by a fictitious person, held unnecessary to prove that no such person existed.—People v. Gordon, Cal., 110 Pac. 469.

81. **Fraud**—Opinions.—Matters which might otherwise be expressions of opinion when stated as accomplished facts accepted and relied on may become the basis of an action for fraudulent representations.—Sheer v. Hoyt. Cal., 110 Pac. 477.

82. **Frauds, Statute of**—Acceptance of Part of Goods.—Where a party pursuant to an agreement to purchase certain old machinery went to inspect them, his breaking up one of the pieces preparatory to removing it as junk held an acceptance of part of the property so as to satisfy the statute of frauds.—Patterson & Holden v. Sargeant, Osgood & Roundy Co. (Vt.), 77 Atl. 338.

83.——Pleading.—In a suit on a contract, the statute of frauds is available as a defense under a denial of contract.—Van Horn v. Demarest (N. J.), 77 Atl. 354.

84. **Gaming**—Public Place.—A private bedroom may become a public place, within the gaming law, if resorted to indiscriminately by different persons at different times for the purpose of gaming without invitation of the owner.—Thrasher v. State (Ala.), 53 So. 256.

85. **Guaranty**—Construction.—An undertaking given as security for a debt, will not be construed as a guaranty of payment rather than collection, where its language is satisfied by the latter construction.—American Exch. Nat. Bank v. Goubert, 124 N. Y. Supp. 817.

86. **Homicide**—Evidence.—In a prosecution for murder, evidence of defendant's effort to procure cotton seed the day previous to the homicide was admissible, since the state's theory was that the murderer was the man who stole deceased's cotton seed.—Pope v. State (Ala.), 53 So. 292.

87.——Resisting Arrest.—The authority of a de facto officer cannot be questioned collaterally, and one who resists and slays him while in the discharge of his apparent duty has only such defense as would exist were the person slain an officer de jure.—State v. Messervy (S. C.), 68 S. E. 766.

88. **Indictment and Information**—Time for Making Objections.—After conviction it is too late on motion for new trial to object that accused was prosecuted under the wrong name.—State v. Hogg (La.), 53 So. 225.

89. **Injunction**—Specific Performance. — Injunction will not lie to prevent the breach of a contract which would not be specifically enforced.—Peterson v. McDonald, Cal., 110 Pac. 465

90. **Intoxicating Liquors**—Revocation of License.—Liquor tax certificate will be revoked where illegal practices are carried on on the premises, though the personal knowledge of the proprietor is not shown.—In re Clement, 124 N. Y. Supp. 814.

91.——Sale of Nonintoxicants.—Regulation of the sale of nonintoxicants in a city located in a local option county is within the police power of the state as to which the general government has no concern.—Kroschel v. Munkers (D. C.), 179 Fed. 961.

92.——Surrender of Certificate.—On application for mandamus to compel payment of rebate on surrendered liquor tax certificate, petitioner must show nonviolation of the law while the license was in force.—People v. Clement, 124 N. Y. Supp. 748.

93. **Larceny**—Animals.—Where accused was charged with stealing cow hides, a conviction could not be sustained in the absence of proof that the hides were cow hides.—West v. State (Ala.), 53 So. 277.

94. **Libel and Slander**—Malice.—Criticism of candidate for renomination as state's attorney held a privileged communication, and not libelous, unless malicious.—Schull v. Hopkins (S. D.), 127 N. W. 550.

95.——Words Imputing Crime.—Words imputing a crime are not slander per se, unless they involve moral turpitude.—Sipp v. Coleman, 179 Fed. 997.

96. **Life Insurance**—Construction of Policy.—Where, in the construction of an insurance policy, the language is not plain, the court will prefer a construction sustaining the policy rather than one that would work a forfeiture.—Hayes v. New York Life Ins. Co., 124 N. Y. Supp. 792.

97.——Incontestible Policy.—A life policy made incontestible by its terms cannot be avoided for fraud or misrepresentation.—New York Life Ins. Co. v. Manning, 124 N. Y. Supp. 775.

98.——Payment of Premium.—Where, as soon as a life insurance policy was issued, the company charged its agent with the part of the premium due it, the debt to the company was transferred to the agent, and it could not claim that plaintiff's failure to pay the premium within the required time avoided the policy.—Perea v. State Life Ins. Co. of Indianapolis, Ind., (N. M.), 110 Pac. 559.

99. **Mandamus**—Ministerial Acts.—The Secretary of State in filing an initiative petition under the initiative amendment to the Constitution adopted in 1908, and the initiative and referendum act, is only a ministerial administrative officer, and the courts will by mandamus control his discretion.—State ex rel. Halliburton v. Roach (Mo.), 130 S. W. 689.

100. **Marriage**—Persons Under Age.—Knowledge of an officer solemnizing a marriage of a female under age, that she is under age, is not a necessary element of the offense of solemnizing such a marriage.—Territory v. Harwood (N. M.), 110 Pac. 556.

101. **Master and Servant**—Failure to Guard Machinery.—A servant, who knows of the master's failure to guard dangerous machinery and voluntarily places himself in a position of peril, cannot recover for injuries.—Healy v. Hoy, (Minn.), 127 N. W. 482.

102. **Mechanics' Liens**—For What Lien Can Be Had.—The object of the lien statutes being to secure a lien for that which goes into the structure, articles furnishd for use merely as tools and appliances are not lienable.—Gilbert Hunt Co. v. Parry (Wash.), 110 Pac. 541.

103. **Money Paid**—Defenses.—A party requesting another to make a payment for him cannot urge in defense that the payment was not yet due.—Minder & Jorgenson Land Co. v. Brustuen (S. D.), 127 N. W. 546.

104. **Mortgages**—Obligation of Mortgagor.—Where the grantee of mortgaged property assumes the mortgage debt, the grantor becomes a surety only, and is discharged by variation of the contract.—Jackson v. Pescia, 124 N. Y. Supp. 735.

105.——Recovery of Possession by Mortgagor.—In action by parties out of possession to determine adverse claims based on mortgage owned by defendant and a tax deed, before plaintiff can recover, they must reimburse defendant for taxes paid and the amount due on his mortgage.—Blessett v. Turcotte (N. D.), 127 N. W. 505.

106. **Negligence**—Proximate Cause.—It is enough to prove that defendant's negligence in any of the particulars alleged was the proximate cause of the injuries.—Beeler v. Butte & London Copper Development Co. (Mont.), 110 Pac. 528.

107. **New Trial**—Granting Second New Trial.—There is no invariable rule limiting the power of the court to one grant of new trial for insufficiency of the evidence.—Vassie v. Central of Georgia Ry. Co., Ga., 68 S. E. 782.

108. **Officers**—Removal.—The legislature has the rght to authorize an officer or board to remove an appointee or elective officer without notice or hearing.—People v. Draper, 124 N. Y. Supp. 758.

109. **Partition**—Who May Bring.—Beneficiary under a will held to have no right to sue in partition; title to the realty being in her trustee.—Johnson v. Gaul (Pa.), 77 Atl. 399.

110. **Partnership**—Allowance for Services.—A partner held not to be entitled to allowance for services in the absence of agreement.—Talbert v. Hamlin (S. C.), 68 S. E. 764.

111. **Perpetuities**—Limitations.—Courts in applying the rule against perpetuities regard all limitations as void ab initio which are not so framed as to take effect of necessity within the legal period, if at all.—Lyons v. Bradley (Ala.), 53 So. 244.

112. **Pleading**—Inconsistent Pleas.—In an action against partners, a plea denying the partnership and of set-off held not inconsistent.—Heisen v. Churchill, 179 Fed. 828.

113. **Pledges**—Nature of Transaction.—Where a transfer of property is absolute on its face, the burden is on one who asserts that it was intended as a mere pledge to establish that fact by clear and satisfactory proof.—Murray v. Butte-Monitor Tunnel Mining Co., Mont., 110 Pac. 497.

114. **Principal and Agent**—Fraud of Agent.—Where a broker in negotiating a loan retained from the proceeds money to pay a first mortgage, for the payment of which the borrower was not personally liable and the broker converted the money, he was the lender's agent, so that the lender, and not the borrower, should stand the loss.—Johnston v. Horowitz, 124 N. Y. Supp. 689.

115. **Quieting Title**—Right of Action.—Direction to executor to sell decedent's property gives him authority to maintain a bill to cancel a deed to remove a cloud on title.—Sears v. Scranton Trust Co. (Pa.), 77 Atl 423

116. **Railroads**—Duty of Passenger to Examine Ticket.—A passenger held not in all cases required to examine his ticket to see whether it expresses the contract of carriage.—Levan v. Atlantic Coast Line R. Co. (S. C.), 68 S. E. 770.

117. **Sales**—Acceptance.—One buying a saw with a guaranty as to what it would do held not to have accepted it by its continued use, while the seller, on notice, was trying to correct the defect.—Berlin Mach. Works v. Miller (Wash.), 110 Pac. 422.

118.——Breach of Contract.—On breach of a purchaser's contract to purchase a part of the assets of a corporation, he is liable, not for the price, but for the difference between the value of the property and the contract price.—Denver Engineering Works Co. v. Elkins, 179 Fed. 922.

119. **Statutes** — Adoption. — The initiative amendment to the Constitution adopted in 1908 requires that the full text of any proposed law shall be embraced in the initiative petition therefor.—State ex rel. Halliburton v. Roach (Mo.), 130 S. W. 689.

120.——Intent of Legislature. — The courts will not attribute to the Legislature the intent to punish the failure to do an impossible thing, if another construction can legitimately be given an act.—Southern Ry. Co. v. Atlanta Sand & Supply Co. (Ga.), 68 S. E. 807.

121. **Street Railroads**—Contributory Negligence.—A passenger on a street car held not to excuse, under a custom, his conduct in getting down on the car steps while the car was still running at a high speed.—Caywood v. Seattle Electric Co. (Wash.), 110 Pac. 420.

122. **Taxation**—Grounds of Relief.—Unless a complainant can invoke some recognized ground of equity jurisdiction, the mere illegality or irregularity of a tax complained of, gives no right to injunctive relief against its collecton.—Singer Sewing Mach. Co. of New Jersey v. Benedict, 179 Fed. 628.

123.——Persons Who May Purchase at Sale.—A husband cannot purchase his wife's land at a tax sale.—Graut v. Burton, S. D., 127 N. W. 480.

124.——Sales for Taxes.—In proceedings to sell land for taxes the statutory requirements, strictly construed, must be substantially complied with to divest the owner of his title.—Hennepin Improvement Co. v. Schuster, 124 N. Y. Supp. 693.

125.——Tax Title.—Whenever a tax title is specially alleged every fact should be averred which is required to show that each statutory requirement has been complied with.—Kinley v. Thelen (Cal.), 110 Pac. 513.

126. **Telegraphs and Telephones**—Contract With City. — In a contract between a city and a telephone company limiting telephone charges to not more than a certain amount "per annum," the term "per annum" should be construed to designate the rate of charge, and not to imply that subscribers must make contracts on an annual basis.—Colorado Telephone Co. v. Fields (N. M.), 110 Pac. 571.

127. **Trade Marks and Trade Names**—Infringement.—The general rule that one cannot invoke the aid of equity when his trade-mark is infringed if such trade-mark is intended to defraud the public, is of universal application and cannot be confined to particular classes of cases.—New York & N. J. Lubricant Co. v. Young, N. J., 77 At. 344.

128. **Waters and Water Courses**—Rights of Riparian Owners.—A riparian owner cannot complain of improvements by the public whereby the water is mantained in the condition which nature has given it.—Stenberg v. Blue Earth County (Minn.), 127 N. W. 496.

129. **Wills**—Contract to Will.—One may sue in equity to establish a contract by defendant to will property to him and to prevent conveyance of the property to another.—Van Horn v. Demarest (N. J.), 77 Atl. 354.

130.——Property Transferred.—A will does not operate upon property conveyed by testator the day before his death and on the same day on which his will was made.—Heatley v. Long (Ga.), 68 S. E. 783.